IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-07-2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.No.1573/2004 & Crl.A.No.138/2005

Crl.R.C.No.1573 of 2004
Anjali ..Petitioner

-vs-

1. The Inspector of Police
   All Women Police Station
   Erode
   (Crime No.5/01)
2. B.John
3. B.Leelavathi .. Respondent

Crl.A.No.138 of 2005

State rep.by
Inspector of Police
All Women Police Station
Erode
Crime No.5/2001 .. Appellant

-vs-

1. P.John
2. D.Leelavathy .. Respondents

The revision and the appeal are filed against the Judgement dated 25.6.2004 in C.C.No.200 of 2001 on the file of the learned Judicial Magistrate No.1, Gobichettipalayam.

For petitioner : Mr. M.M.Sundresh

For appellant/1st respondent in Crl.R.C.No.1573/2004 : Mr.V.R.Balasubramaniam
Additional Public Prosecutor

For respondents in Crl.R.C.No.1573/2004 and in Crl.A.No.138/2005 : Mr.S.Ashok Kumar
for
Mr.P.Thangavel-RR2 & 3
and R1 and R2 respectively

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

C O M M O N O R D E R

Both revision and the appeal arise out of a Judgment in C.C.No.200 of 2001 on the file of the Judicial Magistrate No.1, Gobichettipalayam, which had arisen out of a private complaint filed by the complainant under Section 200 of Cr.P.C. for an offence under Section 506 (ii) and 406 of IPC and under Section 6 of the Dowry Prohibition Act.

2. After taking cognizance, the learned Judicial Magistrate had issued summons to the accused and on their appearance copies under Section 206 of Cr.P.C. were furnished to the accused and when charges under Section 406 and 506 (ii) of IPC and under Section 6 of the Dowry Prohibition Act were framed and when questioned , the accused pleaded not guilty.

3. Before the trial Court, P.Ws 1 to 7 were examined and Exs P1 to P16 were exhibited.

4. P.W.1 is the complainant. According to her, the marriage between her and the son of the accused viz., John was solemnised on 19.7.1997 in the C.S.I. Mission Church, Gobichettipalayam and at the time of the marriage, the parents of the complainant had presented 20 sovereigns of gold ornaments , besides Rs.10,000/- cash and also 10 sovereigns of golden thali chain and five sovereigns of Necklace and a golden chain weighing 2 sovereigns besides presenting a ring and chain on the eve of Christmas and that she also lived along with her husband with the accused in a joint family and that her husband Thiyagarajan was working as a driver in the Public Works Department and that she lived happily for two years after the marriage and that her husband Thiyagarajan developed frequent fever and was suffering from HIV positive and under the pretext of constructing a house, the accused had received 20 sovereigns of gold ornaments from her(P.W.1) and also assured that within one year from the date of marriage, they will return the gold ornaments back to her. According to P.W.1 with the sale proceeds of 20 sovereigns of ornaments handed over by her , the accused have constructed the house but her husband could not recover from his illness and breathed his last on 28.8.1999 at 5.00p.m., 40 days after the death of her husband, she along with her parents and relatives approached the accused for the return of gold jewels weighing 20 sovereigns and cash and other household articles like Bureau, cot, Mixi and Grinder which were presented to her at the time of the marriage by her parents. But the accused have criminally intimidated her to leave the house. According to her, she had preferred a complaint to the All Women Police Station at Udumalpet, but the police have not taken any action on her complaint. Hence she has preferred Ex P1 private complaint before the Judicial Magistrate, Udumalpet. Ex P2 is the complaint preferred by her before the Udumalpet Police. Ex P3 is the copy of the complaint.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4a. P.W.2 is the father of P.W.1, who would admit that the marriage between P.W.1 and the deceased Thiyagarajan took place in the C.S.I.Mission Church on 19.5.1997 at Gobichettipalayam and at the time of the marriage, he presented 17 sovereigns of gold ornaments for his daughter and three sovereigns of chain to his son-in-law besides presenting Rs.10,000/- cash. According to him, he has also presented a Bureau, Cot, Mixi and Grinder at the time of marriage and that they have lived together happily for nearly one year. But subsequently, his son in law developed fever and later it was diagonised that he was suffering from HIV positive and on 28.8.1999 Thiyagarajan died in the hospital and 40 days after the death of his son in law, he along with P.W.1, made a demand to the accused to return the jewels as well cash and other household articles presented at the time of the marriage. But the accused refused to heed to the request made by him and his daughter and that a complaint was preferred by P.W.1 with the All Women Police at Udumalpet . He would further admit that his daughter is also suffering from HIV positive.

4b. P.W.3 is the mother of P.W.1. She has also corroborated the evidence of P.W.2 her husband and that after the death of her son in law , P.W.1 made a demand to the accused to return the gold ornaments and cash and other house hold articles presented to her at the time of the marriage but they have refused to return the same.

4c. P.W.4 is the cousin brother of P.W.1. He would depose that at the time of the marriage of P.W.1, her parents have presented 10 sovereigns of gold ornaments, golden chain and necklace weighing 5 sovereigns and a chain weighing 2 sovereigns and cash of Rs.10,000/- besides house hold articles and a month after the marriage, the accused have received the jewels and cash from P.W.1 for the purpose of constructing a house for them and when P.W1 and her parents demanded for the return of jewels and cash besides furnitures, 40 days after the death of P.W.1's husband, the accused refused to return the same on the ground that they have already constructed the house with the sale proceeds of the jewels.

4d. P.W.5 is the uncle of P.W.1, a retired teacher. According to him, P.W.1's husband died on 28.8.1999 due to Jaundice and 40 days after the death of P.W1's husband, P.W.1 and her parents demanded from the accused to return all the jewels and cash and other house hold articles presented at the time of her marriage but the same was refused by the accused. According to him, 20 sovereigns of jewels are only with the accused.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4e. P.W.6 is the then Inspector of Police,All Women Police Station , Erode. She had received the private complaint sent by the Court through post on 22.3.2002 and registered the case under All Women Police Station, Erode in Crime No.5/2001 under Sections 406 and 506(ii) of IPC and under Section 6 of the Dowry Prohibition Act. She, after completing the formalities, had filed the charge sheet against the accused. Ex P12 is the copy of the first information report. Exs P14 and Ex P15 are the orders of her higher officials in connection with this case.

4f.P.W.7 is the then Sub Inspector of Police, All Women Police Station, Udumalpet. According to her, the complaint was received from P.W.1 and the same was registered under Udumalpet Police Station Crime No.1/2001 under Sections 406 and 506(ii) of IPC and under Section 6 of the Dowry Prohibition Act. Ex p12 is the first information report on the ground of jurisdiction, she had transferred the entire records to the All Women Police Station Erode, along with Ex P16 letter.

5. When incriminating circumstances under Section 313 Cr.P.C. were put to the accused, they would deny their complicity with the crime. On the side of the accused, D.W1 was examined and Exs D1 to D3 were marked.

6. The learned Trial Judge, after going through the oral and documentary evidence has held that the charges levelled against the accused under Sections 406 and 506(ii) of IPC and under Section 6 of the Dowry Prohibition Act were not proved beyond any reasonable doubt and accordingly acquitted the accused under Section 248(1) of Cr.P.C. Aggrieved by the findings of the learned trial Judge, the complainant/P.W.1 has preferred Crl.R.C.No.1573 of 2004 and the State has preferred Crl.A.No.138 of 2005.

7. Now the point for determination in the revision as well as in the appeal is that the findings of the learned trial Judge is perverse in nature to warrant any interference from this Court?

8. Heard Mr. M.M.Sundresh, learned counsel appearing for the revision petitioner, Mr.S.Ashok Kumar, learned counsel appearing for the respondents and Mr.V.R.Balasubramaniam, the learned Additional Public Prosecutor for the State and considered their respective submissions.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

9. The Point:

The only important reason assigned by the learned trial Judge for dismissing the case of the complainant is that there is a discrepancy in Ex P1 complaint and the evidence adduced by her before the Court as P.W.1. In Ex P1 complaint, it is the case of the complainant that at the time of her marriage with deceased Thiyagarajan, the son of the accused, 20 sovereigns of gold ornaments were presented to her and the same were entrusted to the accused at their request for the purpose of raising funds for constructing their house and even after the construction of the house was over, the accused refused to return the said gold ornaments weighing 20 sovereigns to her even after demand was made by her 40 days after the death of her husband.

10. But P.W.2 and P.W.3 the parents of P.W.1 in their evidence would depose that at the time of the marriage 17 sovereigns of gold ornaments were presented to P.W.1 and 3 sovereigns of gold chain was presented to their son-in-law, the deceased Thiyagarajan. As per Ex P1 complaint, the complainant would state that besides 20 sovereigns of gold ornaments, a sum of Rs.15,000/- and another sum of Rs.10,000/- were presented at the time of the marriage by her parents.

11. But P.W.2 , the father of P.W.1 in his evidence would depose that she gave only Rs 10,000/- by way of cash at the time of the marriage to his son-in-law deceased Thiyagarajan but P.W.3, the mother of P.W.1 would state that a sum of Rs.10,000/- was handed over to her son-in-law in cash and another sum of Rs.15,000/- was given to her son-in-law for the purchase of furniture. Further according to P.W.1, Rs.10,000/-worth of furnitures were purchased from Vasanth and Company on 26.2.1997. ie three months before the date of her marriage ie., on 19.5.1997.

12. To substantiate her contention, she had produced a receipt Ex P11. But Ex P11 receipt dated 21.2.1997 was issued by Vasanth Agencies and not by Vasanth and Co.,. As correctly observed by the learned trial Judge there is no evidence let in by the complainant to show that the furniture purchased under Ex P11 receipt were transported to the house of the accused after her marriage.

13. But P.W.1 in her cross examination would depose that the furnitures were purchased by her parents only after her marriage that too after she began to live in the house of the accused. She has produced Ex P10 sale deed in the name of her father-in-law to show that only out of the sale proceeds of her 20 sovereigns of gold ornaments, her father-in-law had purchased the land under Ex P10 . It is no where stated in Ex P10 that out of the sale proceeds of jewels belonging to P.W.1, the property was purchased under Ex P10. The sale consideration shown in Ex P10 is Rs.1,50,000/-.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

14. Under such circumstances, it is the duty of the complainant to show that her 20 sovereigns of gold ornaments were sold for Rs.1,50,000/- and the same was utilised for the purchase of land under Ex P10. But there is absolutely no evidence let in on the side of the complainant to show that her jewels were sold for Rs.1,50,000/- by the accused. So the charge against the accused under Sections 406, of IPC and under Section 6 of the Dowry Prohibition Act falls to the ground as rightly held by the Court below.

15. To bring home the guilt against the accused under Section 506(ii) of IPC and under Section 6 of the Dowry Prohibition Act, also there is absolutely no evidence let in by the complainant. Even the date on which P.W.1 was criminally intimidated by the accused is not spoken to by her, while deposing as P.W.1 before the trial Court.

16. At paragraph 9 of her complaint ExP1, P.W.1 has stated that after the death of her husband when her parents questioned the accused why they have concealed the fact that their son was affected by HIV positive,the accused got enraged and asked P.W.1 and her parents to go out of the house and if they have failed to do so, they have to face dire consequences. But this part of the allegation in
Ex P1 was not spoken to by P.W.2 while deposing before the trial Court P.W.3 has not stated in her evidence about any criminal intimidation of accused against P.W.1 at the time when she along with her parents made a demand for the return of the jewels and cash.

17.According to the complainant, she had preferred the complaint with All Women Police Station,Udumalpet on 13.5.2000 against the accused for their refusal to return the gold ornaments and cash presented to her at the time of the marriage. But the said copy of the complaint was not marked before the trial Court in this proceedings. Under such circumstances I do not find any perverseness in the findings of the learned trial Judge to warrant any interference from this Court. The point is answered accordingly.

18. In fine, Crl.R.C.No.1573 of 2004 and Cr.A.No.138 of2005 are dismissed confirming the judgment in C.C.No.200 of 2001 on the file of the Judicial Magistrate, No.1, Gobichettipalayam.

sg

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

To
1. The Judicial Magistrate, No.1, Gobichettipalayam

2. -d0-the Chief Judicial Magistrate, Erode.

3. The Public Prosecutor, High Court, Madras

4. The Inspector of Police, All Women Police Station, Erode.

+1 cc to Mr.Ma.P.Thangavel, Advocate Sr.No.44596.

VRK(CO)
dcp/27.7.07

Crl.R.C.No.1573/2004
&
Crl.A.No.138/2005

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/